IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 28TH JUNE 2007 / 7TH ASHADHA 1929

Bail Appl..No. 3892 of 2007()

CRIME NO. 97/05 OF KURATHIKAD POLICE STATION

PETITIONER/2ND ACCUSED

SREEJITH @ HARIKUTTAN,
'PADANILATHU PUTHAN PURAYIL, MAVELIKKARA.

BY ADV. SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)
SRI.A.R.DILEEP

RESPONDENTS: STATE & COMPLAINANT

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1. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. SUB INSPECTOR OF POLICE,
KURATHIKAD POLICE STATION.

BY PUBLIC PROSECUTOR SRI. S.U.NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 28/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 3892 of 2007

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Dated this the 28th day of June, 2007

O R D E R

Application for anticipatory bail. The petitioner was initially made an accused in a crime registered, inter alia, under Section 326 I.P.C. He was removed from the array of accused. Final report was filed before the learned Magistrate. Cognizance was taken. The trial is in progress. In the course of the trial, on the basis of the evidence recorded, the learned Magistrate has invoked the powers under Section 319 Cr.P.C. to array the petitioner as an additional accused. Thereupon a warrant of arrest was issued against the petitioner. The petitioner apprehends imminent arrest in execution of the warrant issued.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. He is willing to appear before the learned Magistrate. There was no necessity whatsoever to issue a non-bailable warrant to procure the presence of the petitioner. It is not a case where the petitioner is not co-operating with the investigation or prosecution. Issue of a non-bailable warrant against

the petitioner, who, after investigation was found by the Investigator to be not culpably liable, is unjust, it is submitted. In these circumstances it is prayed that directions under Section 438 Cr.P.C. may be issued in favour of the petitioner. The learned counsel for the petitioner places reliance on the decision in **Bharat Chaudhary** v. **State of Bihar** (AIR 2003 SC 4662).

3. The learned Prosecutor opposes the application. He submits that the Investigators had come to the conclusion that the petitioner is not liable to be proceeded against. Appropriate orders may be issued, submits the Prosecutor.

4. I am satisfied in the facts and circumstances of this case that this is a fit case where, notwithstanding the fact that the apprehended arrest is in execution of a non-bailable warrant issued in a pending proceedings by a court, it is appropriate to invoke the powers under Section 438 Cr.P.C.

5. In the result:

(1) This application is allowed.

(2) The following directions are issued under Section 438 Cr.P.C.

(a) The petitioner shall surrender before the learned Magistrate on 5.7.2007 at 11 a.m. The learned Magistrate shall release the petitioner on bail on condition that he executes a bond for Rs.50,000/- (Rupees fifty

thousand only) with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(c) If the petitioner does not appear before the learned Magistrate as directed in clause (1) above, these directions shall lapse on 5.7.07 and the police shall be at liberty thereafter to arrest the petitioner and deal with him in accordance with law.

(d) If the petitioner were arrested prior to his surrender on 5.7.2007 as directed in clause (1) above, he shall be released on bail on his executing a bond for Rs.25,000/- without any surety undertaking to appear before the learned Magistrate on 5.7.2007.

(R. BASANT)
Judge

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